

FILED

NOV - 8 2005

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 KEVIN V. RYAN, CSBN 118321
United States Attorney
2 JOANN M. SWANSON, CSBN 88143
Assistant United States Attorney
3 Chief, Civil Division
EDWARD A. OLSEN, CSBN 214150
4 Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
6 Telephone: (415) 436-6915
FAX: (415) 436-7169
7

8 Attorneys for Defendant

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 MARIA VALENCIA,

13 Plaintiff.

14 v.

15 UNITED STATES OF AMERICA,

16 Defendant.
17
18

No. C 03-2848-MHP

19 STIPULATION AND ~~PROPOSED~~
ORDER APPROVING COMPROMISE
SETTLEMENT

19 IT IS HEREBY STIPULATED by and between Plaintiff Maria Valencia and Defendant
20 United States of America, by and through their respective attorneys as follows:

21 1. The parties do hereby agree to settle and compromise the above-entitled action
22 under the terms and conditions set forth herein.

23 2. Defendant United States of America agrees to pay to Plaintiff Maria Valencia the
24 net sum of Seven Thousand Five Hundred Dollars and no cents (\$7,500.00), which sum shall be
25 in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of
26 whatsoever kind and nature, arising from, and by reason of any and all known and unknown,
27

28 STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT
C 03-2848-MHP

1 foreseen and unforeseen bodily and personal injuries, damage to property and the consequences
2 thereof, resulting, and to result, from the same subject matter that gave rise to the above-
3 captioned lawsuit, including any claims for wrongful death, for which Plaintiff or her heirs,
4 executors, administrators, or assigns, and each of them, now have or may hereafter acquire
5 against the United States of America, its agencies, agents, servants, and employees.

6 3. Plaintiff and her heirs, executors, administrators or assigns hereby agree to accept
7 the sum listed in paragraph 2 in full settlement and satisfaction of any and all claims, demands,
8 rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and
9 all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to
10 property and the consequences thereof which she may have or hereafter acquire against the
11 United States of America, its agencies, agents, servants and employees on account of the same
12 subject matter that gave rise to the above-captioned lawsuit, including any future claim for
13 wrongful death. Plaintiff and her heirs, executors, administrators or assigns further agree to
14 reimburse, indemnify and hold harmless the United States of America, its agencies, agents,
15 servants or employees from any and all such causes of action, claims, liens, rights, or subrogated
16 or contribution interests incident to or resulting from further litigation or the prosecution of
17 claims by Plaintiff or her heirs, executors, administrators or assigns against any third party or
18 against the United States, including claims for wrongful death.

19 4. This stipulation for compromise settlement shall not constitute an admission of
20 liability or fault on the part of the United States, its agencies, agents, servants, or employees, and
21 is entered into by the parties for the purpose of compromising disputed claims and avoiding the
22 expenses and risks of litigation.

23 5. This Agreement may be pled as a full and complete defense to any subsequent
24 action or other proceeding involving any person or party which arises out of the claims released
25 and discharged by the Agreement.

26 6. It is also agreed, by and among the parties, that the settlement amount of the net
27 sum of Seven Thousand Five Hundred Dollars and no cents (\$7,500.00) to Maria Valencia

28 STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT
C 03-2848-MHP

1 represents the entire amount of the compromise settlement and that the respective parties will
2 each bear their own costs, fees, and expenses and that any attorneys' fees owed by Plaintiff will
3 be paid out of the settlement amount and not in addition thereto.

4 7. It is also understood by and among the parties that, pursuant to Title 28, United
5 States Code, Section 2678, attorneys' fees for services rendered in connection with this action
6 shall not exceed 25 percent of the amount of the compromise settlement.

7 8. Payment of the settlement amount will be made by a check drawn on the United
8 States Treasury for Seven Thousand Five Hundred Dollars and no cents (\$7,500.00) and made
9 payable to Maria Valencia and Meis & Alexander.

10 9. In consideration of this Agreement and the payment of the foregoing amount
11 thereunder, Plaintiff agrees that upon notification that the settlement check is ready for delivery,
12 she will deliver to Defendant's counsel a fully executed Notice of Dismissal with prejudice of
13 Maria Valencia v. United States of America, C 03-2848-MHP. Upon delivery of the Notice of
14 Dismissal, Defendant's counsel will release the settlement check to Plaintiff's counsel or her
15 agent.

16 10. Plaintiff has been informed that payment may take sixty days or more to process,
17 but Defendant agrees to make good faith efforts to expeditiously process said payment.

18 11. The parties agree that should any dispute arise with respect to the implementation
19 of the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement and pursue her
20 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the
21 Agreement in district court. The parties agree that the district court will retain jurisdiction over
22 this matter for the purposes of resolving any dispute alleging a breach of this Agreement.

23 12. Plaintiff hereby releases and forever discharges the United States and any and all
24 of its past and present officials, employees, agencies, agents, attorneys, their successors and
25 assigns, from any and all obligations, damages, liabilities, actions, causes of action, claims and
26 demands of any kind and nature whatsoever, whether suspected or unsuspected, at law or in
27 equity, known or unknown, arising out of the allegations set forth in Plaintiff's pleadings in this
28

STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT
C 03-2848-MHP

1 action.

2 13. The provisions of California Civil Code Section 1542 are set forth below:

3 "A general release does not extend to claims which the creditor does not know or
4 suspect to exist in his favor at the time of executing the release, which if known
by him must have materially affected his settlement with the debtor."

5 Plaintiff having been apprised of the statutory language of California Civil Code Section 1542 by
6 his attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any
7 and all rights she may have pursuant to the provision of that statute and any similar provision of
8 federal law. Plaintiff understands that, if the facts concerning Plaintiff's injuries and the liability
9 of the government for damages pertaining thereto are found hereinafter to be other than or
10 different from the facts now believed by them to be true, the Agreement shall be and remain
11 effective notwithstanding such material difference.

12 14. This instrument shall constitute the entire Agreement between the parties, and it is
13 expressly understood and agreed that the Agreement has been freely and voluntarily entered into
14 by the parties hereto with the advice of counsel, who have explained the legal effect of this
15 Agreement. The parties further acknowledge that no warranties or representations have been

16 "

17 //

18 //

19 //

20 "

21 //

22 "

23 "

24 //

25 "


26 //

27 //

28 STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT
C 03-2848-MHP

1 made on any subject other than as set forth in this Agreement. This Agreement may not be
2 altered, modified or otherwise changed in any respect except by writing, duly executed by all of
3 the parties or their authorized representatives.

4
5 Dated: July __, 2005

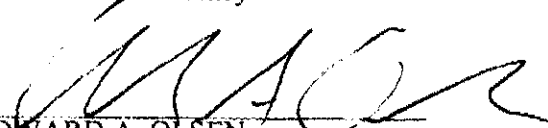

MARIA VALENCIA
Plaintiff

6
7
8 *Sept 26, 2005*
9 Dated: July __, 2005


RICHARD PALENCHAR
MEIS & ALEXANDER
Attorney for Plaintiff

10
11
12 Dated: July 25, 2005

13 KEVIN V. RYAN
United States Attorney

14
15 
EDWARD A. OLSEN
Assistant United States Attorney

16
17
18 **[PROPOSED] ORDER**

19 APPROVED AND SO ORDERED.

20
21 Dated: *11/7/05*


MARILYN HALL PATEL
United States District Court Judge

22
23
24
25
26
27
28 STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT
C 03-2848-MHP